

Application No. 10/715,490
Reply to Office Action of Dec 14, 2005

Patent
Attorney Docket No. 86493-2

II. REMARKS/ARGUMENTS

A. Amendments to the Claims

The application now contains 27 claims.

Claims 1-6, 8-19, 22 and 27-30 remain the same.

Claims 23 and 25-26 have been cancelled from the present application without prejudice.

Claims 7, 20, 21 and 24 remain cancelled.

Claims 31-34 have been added to the present application. No new matter has been added under the current amendment.

B. Statements of Rejection under 35 USC §103(a) and Reply

i) Rejection over Thompson et al. in view of Massey in view of McCain et al.

In the Office Action, the Examiner has rejected claims 1-6, 8-19, 23, 25 and 27 under 35 USC §103(a) as being unpatentable over U.S. Patent 6,696,977 (hereafter referred to as Thompson et al.) in view of U.S. Patent 5,097,790 (hereafter referred to as Massey) in further view of U.S. Patent 6,119,399 (hereafter referred to as McCain et al.).

With regards to claims 23 and 25, the Applicant respectfully submits that these claims have been cancelled from the present application, thus rendering the Examiner's rejection moot.

Application No. 10/715,490
Reply to Office Action of Dec 14, 2005

Patent
Attorney Docket No. 86493-2

With regards to claims 1-6 and 8-19 and 27 the Applicant respectfully disagrees with the Examiner's rejection, for the reasons presented below.

Claim 1

The Examiner's attention is respectfully directed towards the following limitation of independent claim 1.

A traffic-signalling device suitable for redirecting oncoming traffic, said traffic-signalling device comprising:

- a moveable member suitable for attachment to a support, **said moveable member being formed of at least two substantially identical modular components**, said moveable member being operative to move between a first position and a second position, wherein when said moveable member is in said second position said traffic-signalling device is operative to redirect oncoming traffic;
- a solar-powered drive system for causing said moveable member to move between said first position and said second position.

The Applicant respectfully submits that none of the references cited by the Examiner disclose, teach or suggest the above-emphasized limitation of amended claim 1. More specifically, neither Thompson et al., Massey nor McCain et al. disclose a traffic-signalling device comprising a movable member "formed of at least two substantially identical modular components".

In the Office Action, the Examiner alleges that Massey discloses a traffic-signalling device that comprises "at least two substantially identical modular members (column 4, lines 10-21)". The Applicant respectfully disagrees with the Examiner, and submits that the Examiner has misinterpreted the teachings of Massey. The portion of Massey referred to by the Examiner, namely, col 4, lines 10-21, simply indicates that the outer periphery of one section is the same size as the inner periphery of the section. Nowhere does this reference indicate that portions 50, 52 and 54 are "*substantially identical modular members*".

In fact, Massey specifically teaches away from this limitation by requiring that the elongated arm be tapered. With reference to Figures 1 and 2 of Massey, it can

Application No. 10/715,490
Reply to Office Action of Dec 14, 2005

Patent
Attorney Docket No. 86493-2

be seen that portions 50, 52 and 54 of the barrier member are of *different sizes*. Piece 52 is smaller than piece 50 and piece 54 is smaller than piece 52, such that the elongated arm tapers towards its tip. This is explicitly stated in col 4, lines 19-21 of Massey, which state "the sections...will additionally provide the desired taper in the elongated arm". Since the portions 50, 52 and 54 are of different sizes so as to form a tapered barrier arm, the Applicant respectfully submits that this reference does not teach the above-emphasized limitation of independent claim 1.

The Applicant further submits that neither Thompson et al. nor McCain et al. disclose substantially identical modular components either.

Accordingly, the Applicant respectfully submits that the combination of Thompson et al., Massey and McCain et al. fails to establish a *prima facie* case of obviousness as per §2142 of the MPEP, on the basis that the references cited do not teach all the limitations of the claim when taken either individually or in combination. As such, the Applicant respectfully submits that independent claim 1 is in condition for allowance over the references cited, and respectfully requests that the Examiner withdraw his rejection to independent claim 1.

Claims 2-6 and 8-10 depend from independent claim 1, and therefore incorporate by reference all the limitations contained therein, including the limitation identified above as being absent from all of Thompson et al., Massey and McCain et al. Accordingly, the Applicant respectfully submits that claims 2-6 and 8-10 are also in condition for allowance as being dependent upon an allowable base claim. The Examiner is respectfully requested to withdraw his rejection to dependent claims 2-6 and 8-10.

Claim 11

Application No. 10/715,490
Reply to Office Action of Dec 14, 2005

Patent
Attorney Docket No. 86493-2

The Examiner's attention is respectfully directed towards the following limitation of independent claim 11.

A traffic-signalling system suitable for providing information to oncoming traffic, said traffic-signalling system comprising:

- a plurality of traffic-signalling devices, each traffic-signalling device comprising:
 - i) a moveable member suitable for attachment to a support, said moveable member being operative to move between a first position and a second position, wherein when said moveable member is in said second position said traffic-signalling device is operative to provide information to oncoming traffic;
 - ii) a drive system suitable for causing said moveable member to move between said first position and said second position;
 - iii) **a solar powered control system suitable for receiving wireless signals for causing the activation of said drive system.**

The Applicant respectfully submits that none of the references cited by the Examiner disclose, teach or suggest the above-emphasized limitation of amended claim 11. More specifically, neither of Thompson et al., Massey or McCain et al. disclose a traffic-signalling device comprising "a solar powered control system suitable for receiving wireless signals for causing the activation of said drive system".

Firstly, the Applicant respectfully submits that Massey does not disclose anything relating to solar power, and as such, does not teach the above-emphasized limitation of independent claim 1.

Secondly, Thompson et al. simply discloses solar powered warning signs. The warning signs illuminate or flash in order to advise drivers that an upcoming interchange is closed. Nowhere does this reference disclose "a solar powered control system suitable for receiving wireless signals for causing the activation of said drive system" [emphasis added]. Instead, Thompson et al. specifically states in Column 3, lines 52-55 that the drive system comprises an electric motor. Nowhere is it taught that this electric motor is activated by a solar powered control system.

Application No. 10/715,490
Reply to Office Action of Dec 14, 2005

Patent
Attorney Docket No. 86493-2

Finally, with regards to McCain et al., the Applicant respectfully submits that this reference simply teaches a solar powered battery for powering an electric motor. Nowhere does this reference disclose "a solar powered control system suitable for receiving wireless signals for causing the activation of said drive system". As such, this reference does not teach the above-emphasized limitation of independent claim 11, either.

Furthermore, on page 5 of the Office Action, the Examiner indicates that "it would have been obvious to one of ordinary skill in the art at the time of the invention by the applicant that if the drive system is solar-powered, the other components, including the control system, could take advantage of the solar-power". The Applicant respectfully submits that the Examiner is using the benefit of hindsight in order to recreate the claimed invention. Nowhere in any of the references cited is there any motivation to combine the reference teachings in order to arrive at the claimed invention. As per *In re Gordon* 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984) "The mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification".

In light of the arguments presented above, the Applicant respectfully submits that the combination of Thompson et al., Massey and McCain et al. fails to establish a *prima facie* case of obviousness as per §2142 of the MPEP on the basis that these references do not teach the above emphasized limitation of amended claim 11, when taken either individually or in combination. Thus, the Applicant respectfully submits that independent claim 11 is in condition for allowance over the references cited, and respectfully requests that the Examiner withdraw his rejection to independent claim 11.

Application No. 10/715,490
Reply to Office Action of Dec 14, 2005

Patent
Attorney Docket No. 86493-2

Claims 12-19, 22 and 27-28 depend from independent claim 11, and therefore incorporate by reference all the limitations contained therein, including those identified above as being absent from the references cited. Accordingly, the Applicant respectfully submits that claims 12-19, 22 and 27-28 are also in condition for allowance as being dependent upon an allowable base claim, and respectfully requests the Examiner to withdraw his rejection to dependent claims 12-19, 22 and 27-28.

Rejection over Thompson et al. in view of Massey in view of McCain et al. in further view of Inubushi

In the Office Action, the Examiner has rejected claim 26 under 35 USC §103(a) as being unpatentable over Thompson et al. in view of Massey in view of McCain et al. in further view of U.S. Patent 5,370,201 (hereafter referred to as Inubushi).

The Applicant respectfully submits that claim 26 has been cancelled from the present application, thus rendering the Examiner's rejection moot.

C. Acknowledgement of Allowable Subject Matter

Claim 29 & 30

The Applicant gratefully acknowledges the Examiner's allowance of claims 29 and 30, as indicated on page 6 of the Office Action.

Application No. 10/715,490
Reply to Office Action of Dec 14, 2005

Patent
Attorney Docket No. 86493-2

III. CONCLUSION

In view of the above, it is respectfully submitted that claims 1-6, 8-19, 22 and 27-34 are in condition for allowance. Reconsideration of the rejections and objections is requested. Allowance of claims 1-6, 8-19, 22 and 27-34 at an early date is solicited.

If the claims of the application are not considered to be in full condition for allowance, for any reason, the Applicant respectfully requests the constructive assistance and suggestions of the Examiner in drafting one or more acceptable claims or in making constructive suggestions so that the application can be placed in allowable condition as soon as possible and without the need for further proceedings.

Respectfully submitted,

Emma START
Reg. No. 52,534
Agent for the Applicant

Date: September 20, 2005
SMART & BIGGAR
1000 de la Gauchetiere St. West
Suite 3300
Montreal, Quebec
H3B 4W5
CANADA
Tel: 514-954-1500
Fax: 514-954-1396